



ADVISORY OPINION 07-03

Interpretation of § T.C.A. 3-6-304(j)
with respect to whether a lobbyist
may sign campaign contribution
checks to gubernatorial or legislative
candidates in her capacity as the
treasurer of a political action committee.

INTRODUCTION:

The following Advisory Opinion is written in response to a request from Ms. Marylee A. Booth of the Tennessee Oil Marketers Association (“TOMA”) with regard to whether a lobbyist who is the treasurer of a political action committee (“PAC”) may sign campaign contribution checks from the PAC to legislative officials and candidates.

In response to the above question, the Tennessee Ethics Commission (“Commission”) concludes that Ms. Booth, in signing checks as the treasurer of a PAC, is not making a prohibited campaign contribution because she has no authority to direct the distribution of contribution by the PAC, and thus her function is a merely ministerial one.

BACKGROUND:

TOMA is a state-wide trade association which is registered as an employer of a lobbyist. TOMA is governed by a Board of Directors and Ms. Booth serves as TOMA’s Executive Director and is registered as its in-house lobbyist. She also supervises the work of TOMA’s contract lobbyists. Additionally, TOMA has a PAC, the Tennessee Oil Marketers Political Action Committee (“TOMPAC”), which is governed by a Board of Trustees that is separate from TOMA’s Board of Director. Ms. Booth serves as TOMPAC’s secretary and treasurer and in that capacity is responsible for signing checks distributing TOMPAC contributions to candidates.

Ms. Booth states that contributors to TOMPAC may request that their contribution be earmarked for the contributor’s chosen candidate, but unless the contributor makes such a specific request the distribution of the contributions is determined by the Trustees. Ms. Booth states that she may provide advice and information on a candidate to the Trustees, but the final decision regarding the distribution of contributions rests with the Trustees.

DISCUSSION:

May a lobbyist, in her capacity as the treasurer of a political action committee, sign campaign contribution checks to gubernatorial or legislative candidates?

T.C.A § 3-6-304(i) states:

No employer of a lobbyist or multi-candidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contributions to a candidate for the office of

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governor or member of the general assembly during any regular annual session or any extraordinary session of the general assembly.

T.C.A. § 3-6-304(j) states:

No lobbyist shall offer or make any campaign contribution, including in-kind contribution, to or on behalf of the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative.

Accordingly, lobbyists are prohibited from making campaign contributions at any time of the year, but a PAC that is controlled by an employer of a lobbyist may make campaign contributions when the general assembly is not in session.

Under the facts provided by Ms. Booth, she may provide advice regarding the distribution of contributions, but she does not have the authority to determine the distribution. An individual or entity that is making a contribution to TOMPAC may earmark their contribution, but otherwise TOMPAC's Trustees determine what monies will be provided to which candidates.

T.C.A. § 3-6-301(18) defines a "ministerial action" as follows:

"Ministerial action" means an action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, the person's own judgment upon the propriety of the action being taken.

Because Ms. Booth has no decision-making authority regarding TOMPAC contributions, she is not "mak[ing] a campaign contribution" as is prohibited by the statute, but is instead performing a ministerial function when she signs TOMPAC's checks as its treasurer. Accordingly, as long as she herself does not contribute money to TOMPAC and direct its distribution, Ms. Booth may perform purely ministerial functions as treasurer of TOMPAC without implicating the campaign contribution ban contained in T.C.A. § 3-6-304(j).

Thomas J. Garland,
Chair

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Commissioners

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